

INITIAL STATEMENT OF REASONS

Section 1859.2. Definitions

Specific Purpose of the Regulation

To update the revision date of the Grant Agreement master templates.

Need for the Regulation

It was necessary to amend the Grant Agreement master templates in order to align the document with the direct Apportionment process. By doing this, the revision date for the document must be changed.

Section 1859.90. Fund Release Process

Specific Purpose of the Regulation

To amend the fund release deadlines for purposes of distributing General Fund proceeds.

Need for the Regulation

It was necessary to make amendments that would shorten the fund release deadlines with the direct Apportionment process for purposes of distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. As a result of receiving funding for the SFP that is not contingent on bond sales, the State Allocation Board (SAB) is able to return to using an existing funding process that allows for Apportionments to be made on a flow basis outside the current Priority Funding process, which is designed to accommodate twice yearly bond sales. Making Apportionments on a flow basis will enable school districts to more quickly and efficiently access much needed cash for construction projects. In order to ensure that cash moves quickly once allocated to school districts, the change to the regulations shortens the deadlines for fund release from 18 months to either 180 calendar days for non-financial hardship school districts or 365 calendar days for school districts that qualify for financial hardship. It was necessary to remove the reference of inactive apportionment because the SAB only provides actual Apportionments backed by General Fund and General Obligation Bond proceeds on hand. It is highly unlikely that the SAB will be in need of inactive apportionments as the SAB can provide unfunded approvals as an alternative. It was also necessary to remove the language reference to the Pooled Money Investment Board (PMIB) as the School Facility Program (SFP) has not received funding in advance of bond sales from the PMIB in 13 years and there is no indication that this will be a source of funds in the near future. Leaving this language in this section is not necessary for the direct Apportionment process and removing it does not impact the SAB's ability to provide direct Apportionments from this fund source.

Section 1859.90.2. Priority Funding Process.

Specific Purpose of the Regulation

To align this Section with the direct Apportionment process.

Need for the Regulation

Subsection (a)(5): It was necessary to remove the “18-month” wording in order to align this Section with the direct Apportionment process outlined in Section 1859.90 above, as well as correct a cross reference.

Grant Agreement, (Rev. 09/22).

Specific Purpose of the Form

To amend the Grant Agreement master templates to align with the direct Apportionment process.

Need for the Form

It was necessary to make subtle changes in this document that align themselves with the direct Apportionment process.

Overall, the proposed regulations address the shortened direct Apportionment process of funding SFP projects with funds made available from unexpected cash proceeds from sources other than bond funds outside of the Priority Funding Process. The proposed regulations do not supersede the Priority Funding Process; rather, the proposed regulations streamline the funding process when cash proceeds are made available to fund projects under the SFP that are not dependent on the timing and occurrence of bond sales.

The Office of Public School Construction (OPSC) performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that allow the SAB to allocate General Fund appropriations for the funding of school construction in an efficient manner. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulations provides an efficient mechanism for providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

Anticipated Benefits and Economic Impact of the Proposed Regulations

The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds is clarified in regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state’s economy and may also create an unknown number of jobs. Overall, proceeding with the implementation of the proposed regulations provides an efficient mechanism for quickly using cash resources by providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments aligns with the statute, maintains the integrity of the SFP funding process, as well as maintains equity amongst school district projects.

Technical Documents Relied Upon

The OPSC's Stakeholder meeting agenda item, dated August 2, 2022, entitled "Proposed Regulatory Amendments to Allocate Monies Appropriated From Non-Bond Sources."

The SAB's Action item, dated September 21, 2022 entitled "Emergency Regulations to Allocate Monies Appropriated From Non-Bond Sources."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The alternative to these proposed regulatory amendments would be the SAB take no action which results in cash proceeds residing in the state General Fund untouched for up to 18 months.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulatory amendments will not have a negative impact on small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the proposed regulatory amendments will not have a negative economic impact on businesses/small businesses because they are not required to directly comply with or enforce the regulations, nor will they be disadvantaged by the regulations. Proceeding with the implementation of the proposed regulatory amendments is consistent with the statute, maintains the integrity of the School Facility Program funding process, as well as maintains equity amongst school district projects.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulatory amendments do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies, school districts or Charter Schools to incur additional costs in order to comply with the proposed regulatory amendments.

Office of Administrative Law Regulations, Title 1, Section 20(c)(1)

Because the SAB's Grant Agreement master templates is a cumbersome document, it would be unduly expensive and otherwise impractical to publish this document in the California Code of

Regulations. Therefore, it is not necessary to publish this document in the California Code of Regulations.

Office of Administrative Law Regulations, Title 1, Section 20(c)(2)

The SAB's Grant Agreement master templates is made available upon request and through our website and continues to be made available upon request and through our website.

ECONOMIC IMPACT ASSESSMENT OF REGULATIONS

“Emergency Regulations to Allocate Monies Appropriated From Non-Bond Sources”

Proposed State Allocation Board Regulations

At its meeting on September 21, 2022, the SAB approved proposed regulations, on an emergency basis, that would shorten the fund release deadlines with the direct Apportionment process for purposes of more efficiently distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. The Governor signed into law Assembly Bill (AB) 181, Chapter 52, Statutes of 2022, the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill, on June 30, 2022. The bill appropriated, for the 2022/23 fiscal year, \$1.3 billion in one-time General Fund dollars to the SAB for allocation to eligible SFP projects, specifically new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025. The Office of Administrative Law (OAL) approved the emergency regulations, filed them with the Secretary of State, with an effective date of November 7, 2022.

Background and Problem Being Resolved

The problem being resolved is not a problem but a funding opportunity in which projects that are construction ready are able to receive an Apportionment outside the Priority Funding process. As stated above, AB 181, Chapter 52, Statutes of 2022 [Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on June 30, 2022 and included a one-time General Fund appropriation in the amount of \$1.3 billion. The SAB has been charged with allocating the one-time General Fund appropriation to eligible SFP new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

Current Priority Funding Process

The Priority Funding Process is a process by which school districts submit certification requests for cash for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priority Funding certification requests are submitted twice a year during two specific 30-day filing periods, are good for six months, and the requests indicate a school district's desire to convert a project's unfunded approval to an apportionment. For example, one of the 30-day filing periods for school districts to submit certification requests began May 11, 2022 and ended June 9, 2022. The certification requests received during this 30-day filing period are valid from July 1, 2022 through December 31, 2022 for school district projects to be eligible for cash from the Fall 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests began November 9, 2022 and ended December 8, 2022. The certification requests received during this 30-day filing period are valid from January 1, 2023 through June 30, 2023 for their projects to be eligible for cash from the Spring 2023 General Obligation Bond sale.

Direct Apportionment Process

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$1.3 billion General Fund appropriation is an opportunity for cash to be allocated quicker than expected for those projects that are construction ready. This process would allow the SAB to apportion funds on an on-going monthly basis.

OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that allow the SAB to allocate General Fund appropriations for the funding of school construction in an efficient manner. Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulations provides an efficient mechanism for providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

Description of Regulations to Implement Law

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the SFP. The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its meeting on September 21, 2022, the SAB approved proposed regulations, on an emergency basis, that would shorten the fund release deadlines with the direct Apportionment process for purposes of more efficiently distributing the General Fund proceeds, or any other available proceeds, to those projects that would be able to quickly use the funds. The Governor signed into law Assembly Bill (AB) 181, Chapter 52, Statutes of 2022, the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill, on June 30, 2022. The bill appropriated, for the 2022/23 fiscal year, \$1.3 billion in one-time General Fund dollars to the SAB for allocation to eligible SFP projects, specifically new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025. The Office of Administrative Law (OAL) approved the emergency regulations, filed them with the Secretary of State, with an effective date of November 7, 2022.

Anticipated Benefits of the Proposed Regulations

The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds is clarified in regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy and may also create an unknown number of jobs. Overall, proceeding with the implementation of the

proposed regulations provides an efficient mechanism for quickly using cash resources by providing apportionments to projects outside the typical Priority Funding timelines, while ensuring an equitable and streamlined process for school construction projects, as well as maintaining the integrity of the SFP funding process.

The proposed amendments are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments is in alignment with the statutes, maintains the integrity of the SFP funding process, as well as maintains equity amongst school district projects.

Summary of the Proposed Regulatory Amendment

A summary of the proposed regulatory amendments, including the Grant Agreement templates, are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed amendment reflects the revision date for the Grant Agreement templates.

Existing Regulation Section 1859.90 specifies the process for school districts to request the release of funds for SAB-approved apportionments and requires that the requests be submitted within 18 months of the SAB apportionment approval. The proposed regulatory amendments align the direct Apportionment process with the timelines of the existing Priority Funding process by eliminating the 18-month timeline to submit a valid Form SAB 50-05 and Grant Agreement and changing it to 180 days to request the release of funds for non-financial hardship school districts and 365 days for those school districts approved with financial hardship status. In addition to these amendments, the language referencing inactive apportionments is being removed because the SAB is providing actual Apportionments backed with General Fund and General Obligation Bond proceeds on hand. It is highly unlikely that the SAB will be in need of inactive apportionments as the SAB can provide unfunded approvals as an alternative. The language reference to the Pooled Money Investment Board (PMIB) is being removed as the SFP has not received financing in advance of bond sales from the PMIB in 13 years and there is no indication that this will be a source of funds in the near future. Leaving this language in this section is not necessary for the direct Apportionment process and does not impact the SAB's ability to use this fund source in the future.

Existing Regulation Section 1859.90.2 authorizes the SAB to establish 30-calendar day certification filing period to distribute available State school bond funding to school districts that request to convert an unfunded approval to an apportionment. The proposed amendment in subsection (a)(5) removes "18-month" in order to align with the proposed changes in Section 1859.90 above, as well as correct a cross reference.

The existing grant agreement templates include sections relevant to funding provided by the New Construction Program, the Modernization Program, the Charter School Facilities Program, and the Career Technical Education Facilities Program. The grant agreements are entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant program's sections. The grant agreements were developed to address the Office of Statewide Audits and Evaluation's audit findings by improving program oversight and expenditure accountability. The grant agreement also includes changes that implement the trailer bill language (AB 99, Chapter 15, Statutes of 2017), which the Governor signed into law on June 27, 2017. The grant agreements serve as binding documents and key resources that

define the responsibilities of the state and school districts from the determination of the amount of eligible state funding to the reporting of all project funds, including any savings achieved. This ensures transparency and accountability for the program grants being awarded under the SFP. The proposed amendments make subtle changes that align themselves with the amended direct Apportionment process.

Overall, the proposed regulations address the shortened direct Apportionment process of funding SFP projects with funds made available from unexpected cash proceeds from sources other than bond funds outside of the Priority Funding Process. The proposed regulations do not supersede the Priority Funding Process; rather, the proposed regulations streamline the funding process when cash proceeds are made available to fund projects under the SFP that are not dependent on the timing and occurrence of bond sales.

Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Determination of Inconsistency or Incompatibility with Existing State Regulations

AB 181, Chapter 52, Statutes of 2022 [Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill] was signed by the Governor on June 30, 2022 and included a one-time General Fund appropriation in the amount of \$1.3 billion. The SAB has been charged with allocating the one-time General Fund appropriation to eligible SFP new construction and modernization projects. In addition to the \$1.3 billion, the Legislature has declared its intent to appropriate an additional \$2,060,500,000 from the General Fund in the 2023/24 fiscal year and an additional \$875 million from the General Fund in the 2024/25 fiscal year for the same purposes, funding eligible new construction and modernization projects under the SFP until December 31, 2025.

The Priority Funding Process is a process by which school districts submit certification requests for cash for projects that have received unfunded approvals and are sitting on the Unfunded List (Lack of AB 55 Loans). Priority Funding certification requests are submitted twice a year during two specific 30-day filing periods, are good for six months, and the requests indicate a school district's desire to convert a project's unfunded approval to an apportionment. For example, one of the 30-day filing periods for school districts to submit certification requests began May 11, 2022 and ended June 9, 2022. The certification requests received during this 30-day filing period are valid from July 1, 2022 through December 31, 2022 for school district projects to be eligible for cash from the Fall 2022 General Obligation Bond sale. The next 30-day filing period for school districts to submit certification requests began November 9, 2022 and ended December 8, 2022. The certification requests received during this 30-day filing period are valid

from January 1, 2023 through June 30, 2023 for their projects to be eligible for cash from a Spring 2023 General Obligation Bond sale.

In addition to the method of providing funding to convert unfunded approvals as noted above, the one-time \$1.3 billion General Fund appropriation is an opportunity for cash to be allocated quicker than expected for those projects that are construction ready. This process would allow the SAB to apportion funds on an on-going monthly basis.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area, and therefore, the proposed amendments are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendments are within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

Impact to California Businesses and Jobs

The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds is clarified in regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy number and may also create an unknown of jobs.

The proposed regulations and the Grant Agreement master templates are therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments will not have a negative impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities. In addition, the proposed regulations will not negatively impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment

- The proposed regulatory amendments promote transparency because the process of funding SFP projects with unexpected cash proceeds from sources other than bond funds is clarified in regulation. School districts will benefit because the General Fund appropriation will be made available to the SAB for Apportionments to school districts on an on-going basis. Because school districts can receive funding so quickly, manufacturing and construction-related industries such as architecture, engineering, trades and municipalities may expand based on the demand on these industries. This is a positive impact on the state's economy number and may also create an unknown of jobs. Further, it is unlikely that the proposed amendments will eliminate new and/or existing businesses, including the elimination of jobs, within California.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts, charter schools, and local educational agencies utilize construction and trades employees to work on school construction projects and although this proposed regulation does not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship and training. Further, public health and safety is enhanced because a properly paid and trained workforce will

build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.

- There is no impact to the State's environment from the proposed regulatory amendments.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.